THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

M.A. No.01/2018
In
Un-numbered Competition Appeal (AT) No.___/2017
(F.No.22/11/2017/NCLAT/UR/30)

In the matter of:

Nikunj Sisondia …. Applicant

Versus

Earth Infrastructure Ltd. & Anr. …. Respondents

Appearance: Shri Shiv Bhatt, Advocate for the Applicant.

04.01.2018

The aforesaid application is stated to be under Section 5 of the Limitation Act seeking extension of time for compliance under sub-rule (3) to Rule 26 of the NCLAT Rules, 2016 (Rules of 2016).

2. In the application it is alleged that there is a delay of 34 days for compliance under sub-rule (3) to rule 26 in refiling the appeal as the Applicant/ Appellant is staying in West Bengal and also due to the non-availability of the counsel at Delhi. The delay was caused due to unforeseen circumstances and the delay is alleged to be neither intentional nor deliberate. Hence, the prayer is to condone the delay of 34 days for compliance under sub-rule (3) to rule 26 of the Rules of 2016 in refiling the appeal.

3. The points that arise for consideration are:

(i) Whether the delay in curing the defects is liable to be condoned as prayed for in the application?

(ii) Reliefs.

4. **Point No.(i): -** Heard the learned counsel for the Applicant.

The aforesaid Appeal under Section 53B of the Competition Act, 2002 (hereinafter referred to as the Act of 2002) was presented before the Registry on 22.11.2017. The appeal when scrutinized on 23.11.2017 was found to be defective and hence the Applicant was informed of the defects on the same day with a direction to cure the same within a period of seven days. The period of seven days expired on

30.11.2017. However, the appeal was presented after curing the defects only on 27.12.2017 and hence the Section has put up the matter before me for appropriate orders.

5. The Finance Act, 2017 (hereinafter referred to as the Act of 2017) brought in certain amendments to the Act of 2002. In addition to the amendments made, some of the sections of the Act were omitted, i.e., sections 53C, 53D, 53E, 53F, 53G, 53H, 53-I, 53J, 53K, 53L, 53M, 53R and clauses (mb), (mc) and (md) of sub-section (2) to section 63 of the Act.

6. Sub-section (1) to section 63 of the Act of 2002 empowers the Central Government to make Rules by way of notification to carry out the provisions of the Act. In exercise of the powers conferred by clauses (ma) and (me) of sub-section (2) of section 63 read with sub-section (2) of section 53B and sub-section (2) of section 53N of the Act of 2002, the Central Government made the Competition Appellate Tribunal (Form and Fee for Filing an Appeal and Fee for Filing Compensation Applications) Rules, 2009 (hereinafter referred to as the Rules of 2009). The aforesaid provisions of the Act have not been omitted or repealed by the amendments brought in by way of the Act of 2017. Hence, the Rules of 2009 still remain in the statute book.

7. Likewise, section 53-O of the Act of 2002, which has also not been omitted or repealed by the Act of 2017, empowers the Appellate Tribunal (which after the amendment is the NCLAT) to regulate its own procedure subject to the provisions of the Act and any Rules made by the Central Government. In exercise of the power contained under this section the erstwhile Competition Appellate Tribunal made the Competition Appellate Tribunal (Procedure for Appeals and Applications) Regulations, 2011 (hereinafter referred to as the Regulations of 2011), which also continues to be in statute book without any amendments.

8. The Rules of 2016 have not been made applicable by any order or notification of the Central Government to the Appeals filed under the Act of 2002. No new Rules or Regulations under the Act of 2002 have been made after the amendments to the said Act were brought in by the Act of 2017. Therefore, the Rules of 2009 and the Regulations of 2011, which have not been amended pursuant to the Act of 2017 coming into force, govern the procedure for filing and processing of appeal(s) and application(s) filed under the Act of 2002.

9. Sub-rules (1) to (5) to Rule 3 of the Rules of 2009 prescribe the form and the procedure for filing an appeal under the Act of 2002. The format of the appeal is contained in the Form appended to the Rules. Further, sub-rule (6) to rule 3 stipulates that the procedure for filing an appeal would be as decided by the Appellate Tribunal.

10. Sub-section (2) to section 53B of the Act of 2002 stipulates that an appeal under sub-section (1) shall be filed within a period of 60 days from the date on which the impugned order is received by the aggrieved party. The certified copy of the impugned order is dated 08.09.2017. Though, the Applicant in Para 2 of the appeal memorandum alleges that the impugned order dated 06.09.2017 was received on 20.09.2017, no proof of the same has been produced. Therefore, the Section has rightly computed the period of limitation of 60 days from 09.09.2017. When so computed, the period of 60 days expires on 07.11.2017. The initial presentation of the appeal is on 22.11.2017 and the subsequent presentation after curing the defects is 27.12.2017, both days obviously being beyond the period of 60 days provided under the Act of 2002 for filing the appeal.

11. Regulation 7(2) of the Regulations of 2011 does give the Registrar the power to grant time to rectify defects if any, in case the appeal on scrutiny is found to be defective. However, in this case the initial presentation of the appeal itself is beyond the period of limitation and therefore condoning the delay as prayed for would in effect result in extending the time for filing the appeal, which discretion can only be exercised by the Hon'ble Appellate Tribunal by invoking the powers under the proviso to sub-section (2) of section 53B of the Act of 2002, which says that the Appellate Tribunal can entertain an appeal after the expiry of the period of 60 days if it is satisfied that there was sufficient cause for not filing it within that period. Hence, the matter be placed before the Hon'ble Appellate Tribunal for appropriate orders. Point answered accordingly.

12. **Point (ii): -** M.A. No.01/2018 disposed of accordingly.

List the matter before the Hon'ble Appellate Tribunal on 08.01.2018.

(C.S. Sudha)
Registrar